

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
ROBINSON, GRAHAM CHASE, : Docket #1:19-cv-09156-  
 : LJL-KHP  
Plaintiff, :  
- against - :  
DE NIRO, ROBERT, et al., : New York, New York  
 : January 31, 2022  
Defendants. :  
 : TELEPHONE CONFERENCE  
----- :

PROCEEDINGS BEFORE  
THE HONORABLE KATHARINE H. PARKER,  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: 19cv9156, Robinson versus De Niro.  
The Honorable Katharine H. Parker presiding. Beginning  
with counsel for the plaintiff, please make your  
appearance for the record.

MS. ALEXANDRA HARWIN: This is Alexandra Harwin  
from Sanford Heisler Sharp on behalf of the plaintiffs.

MS. KATE MacMULLIN: This is Kate MacMullin from  
Sanford Heisler Sharp on behalf of plaintiffs.

MS. ANN SLOAN: This is Annie Sloan from Sanford  
Heisler Sharp on behalf of the plaintiffs.

MR. LAURENT DROGIN: For defendant Canal  
Productions, Laurent Drogin.

MS. BRITTANY LAZZARO: Also for defendant Canal  
Productions, this is Brittany Lazzaro from Tarter Krinsky  
& Drogin.

MR. GREGORY BENNETT: For all defendants,  
Gregory Bennett, Traub Lieberman.

THE COURT: Okay. Good afternoon, everyone.  
Because we're meeting on the phone, just a few  
preliminaries. I ask you to keep your phones on mute and  
to state your name for the record before speaking for  
clarity of the record. The Court's making a recording of  
this call, and if you'd like a transcript, you can order  
one.

1  
2 Finally, the Court's conference line is open to  
3 the press and public on a listen-only basis, and I want to  
4 remind everyone on the call that the Court prohibits  
5 others from recording and rebroadcasting court  
6 conferences, including this one, and that violations of  
7 this rule may result in sanctions.

8 The parties are in the midst of completing  
9 discovery. The Court issued some rulings on various  
10 discovery issues, and there's still briefing to be  
11 completed on motions to compel production of certain  
12 documents that were redacted or withheld on the basis of  
13 privilege. That briefing will be completed in February.  
14 I also extended the parties' time by a little bit to  
15 complete their depositions. I want to understand where  
16 you are in the scheduling of depositions because I'd like  
17 them to be completed. Let me hear from plaintiff first.

18 MS. HARWIN: Thank you, Your Honor. Since the  
19 last - this is Alexandra Harwin speaking. Since the last  
20 court conference on December 15, plaintiffs moved forward  
21 diligently in conducting depositions and pursuing  
22 discovery. There are four depositions that have taken  
23 place. Plaintiff has taken the deposition of Canal  
24 employees and Harvey Robin Chambers and Sabrina Weeks-  
25 Brittan, and defendants took plaintiff's first day of

1 deposition as well.

2  
3 In scheduling depositions, plaintiff has  
4 endeavored to prioritize the deponents who are not  
5 substantially implicated in the disputes concerning  
6 privilege. As the Court just said, Court has recently  
7 resolved a number of motions which the parties very much  
8 appreciate, but there are substantial disputes between the  
9 parties concerning defendants' claims of privilege and  
10 work product protection that remain unresolved.

11 The Court originally set a schedule under which  
12 the privilege disputes would've been completed, would've  
13 been fully briefed by last week, and based on the pendency  
14 of the motion to compel, plaintiff requested an extension  
15 of the deadline to complete fact depositions, and the  
16 Court granted a two-week extension of the fact deposition  
17 deadline. But after granting that two-week extension, the  
18 Court substantially extended the motion to compel briefing  
19 schedule giving defendants an additional four weeks to  
20 file their opposition papers. And as the Court just  
21 noted, under the new schedule the motion to compel will  
22 not be fully briefed until February 24.

23 But at that time the Court didn't further extend  
24 the other discovery deadline, and so under the current  
25 schedule the parties are required to complete fact

depositions nearly two weeks before the motion to compel is fully briefed. This is a substantial departure from the schedule that the Court originally contemplated which provided that the parties would have 12 weeks after the completion of document production to complete fact depositions. And, of course, that's standard to have document production complete and privilege issues resolved before completing depositions because access to all relevant documents permit the litigants to conduct and complete depositions efficiently and thoroughly.

After the last court conference, over a month went by without defendants supplementing their production to cure or narrow any of the privilege disputes. Defendants subsequently said they'd produce documents by no later than January 21, but that never happened. Just last week defendants began producing various documents that they had withheld. The production has come in dribs and drabs with productions on Monday the 24th of January, Wednesday, January 26, and Saturday, January 29, just two days ago, which apparently included over 2,000 pages of documents that had been withheld. Defendants' recent productions contain heavily redacted documents that involve all of the individuals that plaintiff still needs to depose.

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2 In addition, defendants' productions were not  
3 accompanied by amended privilege logs or explanation to  
4 enable plaintiff to ascertain what documents have been  
5 produced versus what documents continue to be withheld.  
6 But it is apparent that defendants continue to withhold or  
7 redact documents involving all of the individuals  
8 plaintiff still needs to depose. So all this has left  
9 plaintiff without sufficient information and time to  
10 prepare for depositions if they have to be completed by  
11 February 11.

12 The parties conducted a lengthy meet and confer  
13 on January 27 to prepare for this conference. The parties  
14 agreed during that meet and confer that the most efficient  
15 course would be for the Court to extend the deadline to  
16 complete fact depositions until a reasonable time after  
17 the Court had decided the motion to compel and any  
18 supplementary document production for defendants was  
19 completed. As it is now, plaintiff is still in the dark  
20 as to the universe of documents that defendants continue  
21 to withhold and have not been provided with sufficient  
22 time to review and process defendants' document  
23 productions which remain ongoing. It would be inefficient  
24 and --

25 THE COURT: Let me just stop you. Let me just



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stop you for a second, Ms. Harwin.

MS. HARWIN: Sure. Absolutely.

THE COURT: Because as I understood it, the defendants had provided a privilege log, and now what I'm hearing you say is that they have withdrawn the claim of privilege and produced some of the documents previously withheld.

MS. HARWIN: So defendants produced the privilege logs which we provided to the Court as part of our motion to compel briefing. They this past week have produced certain additional documents. Again, we don't have a comprehensive description of what these documents represent and what they continue to withhold. They've stated that they anticipate providing a privilege log at some point today, but we have yet to see what that represents. But from our discussions with defendants it's clear that that doesn't fully resolve the parties' dispute, that documents concerning all of the witnesses that we still need to depose will continue to be withheld and/or redacted despite the supplemental production.

THE COURT: Well, the question is whether they're being withheld properly or not, and if defendant is withholding documents improperly, then the appropriate sanction would be to reopen a deposition and charge the

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2 defendant with costs. Now, the defendant should be able  
3 to understand what documents are privileged and not  
4 privileged. The case law is pretty clear on that. And so  
5 let me hear from defendant about what has been produced.  
6 Can you provide an explanation?

7 MR. BENNETT: Yes, Your Honor, this is Gregory  
8 Bennett for the defendants. I will explain the  
9 progression of events over the last December 15  
10 conference. Ultimately, at the end of the day, with  
11 respect to the pending motion to compel, concern the  
12 privilege documents. The efforts that the defendants have  
13 engaged in since the December 15 conference will serve to  
14 substantially narrow the dispute that the Court will  
15 ultimately need to adjudicate through that motion.

16 But taking the Court through it, prior to the  
17 last conference which was December 15, defendants notified  
18 the plaintiff after a meet and confer concerning their  
19 claim that there were certain inadequacies in the  
20 privilege log, that the defendants would conduct a  
21 supplemental review of all documents that had been  
22 withheld up until that point, as were cited in the  
23 categorical logs. Since that December 15 conference, as  
24 Your Honor might recall, we were given the weekend  
25 essentially to prepare for plaintiff's deposition and

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conducted that later on after that conference. Since the December 15 conference, there have been 45 filings in the case. As plaintiff's counsel mentioned, four depositions have taken place thus far while plaintiff's remain, still needs to be completed.

We certainly appreciate that plaintiff's counsel doesn't look at it this way. The case simply doesn't warrant a platoon of lawyers trying to handle things on an hourly basis every single day. The defendants have taken steps to try to produce the documents and conduct that supplemental review in as timely a manner as possible while still attending to the numerous other things that are going on in this case that, as the Court describes, the flurry of motions that were recently filed.

Part of the documents that defendants produced recently were also in response to plaintiff's shocking testimony as to a particular area of her duties, as the Court might recall in reviewing her deposition transcript. We do intend to serve not only an amended privilege log today but also an explanatory letter describing what has been produced thus far.

Essentially, as far - from the categories that are mentioned in the privilege logs, the defendants have now taken steps to produce several of those categories to

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try and narrow the dispute encompassed by the motion to compel. And there will be additional information explaining what documents were produced and what dispute still remains once we send out that communication to plaintiff's counsel today.

THE COURT: So how is this going to impact the motion that's been filed? I was under the impression that the plaintiffs were going to identify some documents and that those would be the documents that would be submitted for in camera review.

MR. BENNETT: This is Gregory Bennett again. I planned on broaching that topic with plaintiff's counsel to try and figure out the best way forward on that. Certainly the defendants, under the prior order, I don't have it in front of me, but I believe the Court ordered the defendant to provide a sample of 20 documents from each category at the time that the defendants filed their opp for an in camera review. We can certainly proceed in that manner if the Court still wishes to do so.

THE COURT: No, I didn't think that I was saying 20 from each category. How many categories are there?

MR. BENNETT: Now there are a total - we distinguished between text and email productions, and I

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have it in front of me, I believe the email productions contain six categories, but there are only three which remain at issue, and there's really only two categories to the text messages.

THE COURT: So there's five categories.

MR. BENNETT: I believe that's accurate, Your Honor, yes.

THE COURT: And how many documents are in each category?

MR. BENNETT: The total number of documents for each category differs.

(interposing)

MR. BENNETT: I don't have - so the text messages I believe there are a total of nine documents being withheld under all categories. Certainly, the emails are far greater than that. Again, we produced 50,000 pages of discovery. We withheld I'm sure at least 200 plus documents under the other email related categories. But I don't have a precise figure for you at the moment, Your Honor.

THE COURT: And so because of the categorical log, you don't have an ability to pick out precise documents, is that the situation?

MR. BENNETT: We certainly can. From the ESI

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platform that we're using, we can have them generate a random sample or pick a random sample of 20. To the extent it will be easier for the Court and/or opposing counsel, defendants are also amenable to doing a doc by doc privilege log if that's going to make everything easier. At least in defendants - there's a vast amount of data at issue here, not only which has been exchanged so far but which remains withheld under claims of privilege. And so whatever is going to be --

THE COURT: And what about a --

(interposing)

THE COURT: Okay, so what are the categories that are left?

MR. BENNETT: I think the primary category at issue would be communications following plaintiff's resignation up to the filing of the state court action, which would be August 17, 2019. Defendants just produced a traunch of documents related to that issue which show the factual basis for why Canal commenced the state court action. Defendants still believe, however, there are privileged communications between and among Mr. DeNiro, Canal's general counsel, and Canal's external legal counsel that are properly withheld under either work product or attorney-client privilege.

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THE COURT: Okay.

MR. BENNETT: In addition --

THE COURT: Ms. Harwin, is that the primary category that you're concerned with?

MS. HARWIN: So that is certainly an important category of documents that we're concerned with. You know, as it is now, I can't fully respond to what Mr. Bennett is saying because I don't have the amended privilege log identifying what documents now are no longer being withheld. But that certainly is a significant category.

And to address what has been raised about the procedure, as I believe Mr. Bennett noted, the Court's original order directed defendants to file a document by document privilege log and present a random sample of 20 documents from each category at issue. And, you know, we do believe that that procedure makes good sense given that we don't have a document by document privilege log or even an identification of the number of documents being withheld from each category to enable plaintiff to identify specific documents for defendants to produce to the Court for in camera review.

THE COURT: Okay, so then we'll stick with the procedure that I set forth.

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2 MS. HARWIN: The original procedure --

3 THE COURT: Right --

4 MS. HARWIN: -- that the Court --

5 THE COURT: -- and preparation of a document by  
6 document log.

7 MS. HARWIN: And, Your Honor, if I could just  
8 turn to the implications of this for deposition because I  
9 think that that's obviously an important issue, and I  
10 could share some additional information.

11 You know, with respect to the depositions we've  
12 previously conducted, as I mentioned, we prioritized the  
13 deponents that were not substantially implicated in the  
14 privilege dispute. We proceeded, for instance, with the  
15 deposition of a Canal employee named Sabrina Weeks-Brittan  
16 based on the understanding that she was not substantially  
17 implicated in the privilege disputes or involved in the  
18 purported investigation into plaintiff. But after her  
19 deposition was completed, just this past week, defendants  
20 produced numerous documents for the first time that they  
21 withheld reflecting her, the deponent's extensive  
22 involvement in the purported investigation into plaintiff.  
23 But plaintiff was unable to confront the deponent at her  
24 deposition because we didn't have those documents.

25 And it is - while the possibility of recalling



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the witness exists, the more efficient course is for plaintiff and plaintiff's counsel to have the documents in hand prior to deposition to be able to prepare appropriate questions and to be able to identify appropriate areas of inquiry for the witness rather than having to do partial depositions based on a partial documentary record and then having to recall each witness.

We anticipate very similar problems for the remaining deponents. Defendants are withholding or redacting documents concerning all of the remaining witnesses: Mr. DeNiro, Canal employee Michael Kaplan, defendants' accountant Michael Cash who's one of defendants' Rule 30(b)(6) witnesses, Mr. DeNiro's lawyer-fixer Tom Harvey who's another of defendants' Rule 30(b)(6) witnesses, and Mr. DeNiro's girlfriend Tiffany Chen. All of these individuals were actively involved in the acts of alleged retaliation that go to the heart of this case. I believe that all of these individuals are the subject of documents being withheld under the category that Mr. Bennett just described. And if plaintiff has to complete depositions based on the incomplete documentary record, it's likely we'll have to re-depose each and every one of those witnesses following the resolution of the motion to compel.

And in addition, the parties anticipate substantial disputes over the scope of privilege concerning what topics and documents are or are not privileged. By contrast, if the Court has ruled on plaintiff's motion to compel, the scope of privilege will be clarified for all parties, and we can anticipate far fewer disputes as to privilege during the deposition which obviously makes for just a much more efficient deposition.

And so we would respectfully request that the Court proceed in deciding the motion to compel and for the fact depositions to be completed a reasonable time after the motion to compel is decided and any supplementary production from defendants is completed. Because as it is now we are in a period where we're continuing to receive documents, including, again, thousands of documents just this past Saturday, that we need to review and process and understand what is there and what hasn't been produced. And, again, it implicates each and every witness that remains.

THE COURT: Why is it that defendant is so late in producing all of these documents in dribs and drabs? I don't understand. This document discovery was supposed to have been done, and, you know, the case starts out by the parties saying everything is hunky dory, and then at the

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last minute you're seeking all kinds of extensions and haven't produced what's been requested. What's going on?

MR. DROGIN: Judge --

MR. BENNETT: Your Honor, this is -

MR. DROGIN: Greg, can I take a crack at it?

MR. BENNETT: Of course.

MR. DROGIN: I think - there's a holistic view that needs to be understood and considered here. There is a period of time which is relevant between let's say January of 2019 and April 2019 when plaintiff resigned. During that period of time there is growing suspicion about plaintiff's activities, and this is being looked at informally, and it's being looked at by Mr. DeNiro's girlfriend. On some of those emails and texts, the attorneys are involved as there are questions as to what is going on. Sometimes there's an attorney involved, sometimes there isn't. Sometimes an attorney is brought in later.

THE COURT: Well, how is there any privilege with Mr. DeNiro's girlfriend, how does that, how is - she's not an employee of Canal.

MR. DROGIN: Correct. Correct.

THE COURT: So why there be any privilege that attached whatsoever, even if the lawyer was an on email

1 with the girlfriend?

2 MR. DROGIN: That's what I'm getting to. At  
3 some point, and we know when, it shifts. It shifts from  
4 what's going on here to we understand what's going on  
5 here; we now need to gather information from the employees  
6 to determine whether or not two things are going to  
7 happen. One, we're going to commence litigation, or, two,  
8 we're going to refer this to the district attorney's  
9 office. Both of those things happened, and both of those  
10 things happened before the lawsuit was filed. So now we  
11 have this outside date of August 19 which is when the  
12 lawsuit was filed. So I believe 90 percent of the issues  
13 here relate to the period post-resignation, pre-  
14 commencement of the lawsuit.

15 And many of these documents involve  
16 communications with, between the attorneys and Mr. DeNiro  
17 about facts that were discovered, who's gathering the  
18 information, and what are we doing with them,  
19 recommendations as to different things that we can do, so  
20 on and so forth. Exactly the type of things that an  
21 attorney and a client would never anticipate opposing  
22 counsel would be ever able to lay their eyes on. In some  
23 of those circumstances, Mr. DeNiro did copy his girlfriend  
24 on them because she had some of the relevant information,  
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because she had gathered it.

So we've got this kind of like bird's nest where we know how it ends, and you've got to remember the only relevance that this has to this case is our affirmative claims, this is the evidence we have against her, which we're producing anyway. The small component here that they're looking for here has to do with the retaliation claim.

So if I wanted to disclose something tactically, for example, a date showing that before the lawsuit was ever filed, before Ms. Robinson ever had an attorney that surfaced, Mr. Harvey was already in touch with the district attorney's office. That blows the retaliation claim out of the water. We want to disclose that. Even if it's privileged, we want them to know that because it completely destroys their retaliation claim because there was no protected activity --

THE COURT: Well, if you're relying on the investigation as part of your defense, then there would be, any privilege would be waived with respect to that investigation.

MR. DROGIN: It's not - factually we have no problem in terms of what was produced, and that was what was alluded to when Ms. Weeks-Brittan was deposed and

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plaintiff's counsel asked her about how certain things were tabulated, how they came up with certain numbers. So I disagree with Ms. Harwin as to whether or not that's been explored.

But the point is is, look, you have as example, Judge, there's a draft complaint that is sent by counsel to Mr. DeNiro on I think it's August 1 or August 2 where he's given information and he's asked to review the complaint and how he wants to proceed. That's the level of detail that we're talking about, and it specifically goes to motivation.

So, again, I think when you get right down to it as to what are the real documents that are being fought over, the vast majority of them are direct communications with Mr. DeNiro by counsel, and in some instances he has shown them to his girlfriend, and I think that's, those are the documents that you're going to see. Because she is a fact witness who's going to be deposed who is providing him with information as to what she had found. You're right, she's not a Canal employee. I guess that's why she's not sued, you know, I don't know.

But I just want to be very clear so you have a better understanding just as to - it really is quite unique here because we're being asked not only to justify

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our claims where obviously we've got a burden of proof but also to prove a negative which really isn't, it's kind of backwards. They're the one that has to prove that there was retaliatory intent here. You know, we're being sort of asked to disprove something that's not our burden, and we're being asked to disprove it by being compelled really to disclose confidential information to show when things happened. Factually I have no problem with that.

You know, there's a draft letter from Mr. Harvey to Mr. DeNiro in the middle of June before Ms. Robinson's attorney ever came onto the surface. The message then was please return the Sky Miles or you'll face civil or criminal prosecution. That was ultimately changed in the letter that was sent to her on July 13, but factually we want them to know what that letter said.

THE COURT: Okay, fine.

MR. DROGIN: Parts of it are redacted though.

THE COURT: Nothing about discovery alters burdens of proof on a dispositive motion or at trial. Discovery is simply the exchange of information relevant to the claims and defenses and proportional to the needs of the case. So what you're talking about is production of documents relevant to your defense of the retaliation claim. That's not shifting a burden of proof.

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MR. DROGIN: Well --

THE COURT: That's neither here nor there. The issue before the Court is whether to extend discovery, and I'm reluctantly going to extend the time to depose the four remaining fact witnesses. Let's identify them now.

MS. HARWIN: So the remaining fact witnesses are Mr. DeNiro, Mr. Kaplan, Michael Kaplan. I can give full names. Robert DeNiro, Michael Kaplan, Michael Cash, Tom Harvey, and Tiffany Chen. And then in addition, there's the Rule 30(b)(6) deposition in which the witnesses are Mr. Cash and Mr. Harvey. So there are technically five depositions involving four witnesses.

THE COURT: I have --

MR. DROGIN: Five witnesses.

(interposing)

THE COURT: -- five --

MS. HARWIN: Your Honor, yes, I'm sorry, Your Honor, technically six depositions involving five witnesses.

MR. BENNETT: And, Judge, counsel are all prepared to move forward to conclude plaintiff's deposition on February 9. That date has been cleared with all counsel.

MS. HARWIN: Yeah, we don't need an extension



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of time to complete plaintiff's deposition. It's for the remaining five witnesses that I just named for those six depositions. And, Your Honor, we would respectfully ask that the time to complete those depositions be tied to the timing for deciding the motion to compel and the completion of any supplementary document production. Because, of course, we don't know when that will be decided nor any deadline that the Court will set for producing any supplemental documents, and so we would want a reasonable time which the parties thought would be four weeks to complete fact depositions after the motion to compel is decided and any supplementary document production is completed.

THE COURT: Under the protocol, what I'm hearing now is under the protocol there would be a hundred documents submitted for in camera review. I don't know that that's necessary if there's only - that's like 50 percent of the documents that have been withheld, and I don't know that that makes a lot of sense. It's not going - that I need that much in terms of a sample for the documents that have been withheld. It seems to me that the in camera can be, you know, more like 10 percent of the documents withheld.

MS. HARWIN: Your Honor --

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(interposing)

MR. DROGIN: It's Laurent Drogin again. Two things. First of all, I just want to make sure the Court is aware in the event you decide not to extend discovery, there are dates set for every one of these witnesses with the exception of a half day for Mr. DeNiro. So we have that in place in case you do not extend the discovery deadline. Also, I think one of the critical questions here, I think a lot of these documents are going to be, as I indicated, documents that ultimately Mr. DeNiro shared with Ms. Chen because she had information based on her becoming a fact witness here. If there's a privilege there, the number of documents implicated here shrinks drastically. If there's no privilege, it's a different story if the privilege has been waived. We think it hasn't been waived, and here we are on the briefing question.

THE COURT: Well, if Ms. Chen was included in the communications, how can there be a privilege?

MR. DROGIN: Because our position that at that point she was really an agent for him and for Canal because she had been the original one that uncovered the wrongdoing.

THE COURT: That doesn't make any sense. An

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agent? She's a fact witness. She's --

MR. DROGIN: She is a fact --

THE COURT: It's the same as when you conduct any investigation and get information from fact witnesses. The underlying facts are not privileged.

MR. DROGIN: We're not talking about the facts. We're not talking about the facts. We're talking about communications with attorneys about how to proceed. We're not talking about the facts. The facts, of course --

(interposing)

THE COURT: -- for Canal. She's not a decisionmaker for Canal. She has no attorney-client relationship. She's not paying - all she is is a fact witness.

MR. BENNETT: Your Honor, this his Gregory --

THE COURT: You all elected to include her in communications, that's, you know, I don't see how case law would support her being deemed an agent. The case law is pretty clear that when a third party is included, it has to be for purposes of assisting the lawyer in providing things the lawyer can't advise on as to that, and just simply providing facts is not something that would fall into that category. So I --

MR. BENNETT: The way --

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THE COURT: I don't see how that would remain privileged.

MR. BENNETT: Well, the way that we're looking it, as an example, is if the attorneys sat down with the employees of Canal and discussed the factual findings, we understand the facts are discoverable, but how the facts were being used is another story. So in this case she was one of the people who, yes, is a fact witness. Whether she was an employee or not, I'm not clear how that happen, why that matters if she was assistant the attorney which is exactly the case.

And on some things, Your Honor, she's a fact witness, and there's no issue. There's no privilege at all. We don't claim that there is. We're really just talking about a very narrow subset here.

THE COURT: I'm skeptical of this argument, I have to say.

MR. DROGIN: Well, same as work product, Judge. I mean it's gathering information, it's presenting to us so we can advise - at that point, remember also, it's - sometimes I forget this as well --

THE COURT: But you're relying on the investigation as part of your defense.

MR. DROGIN: Yes, and factually I have no

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problem turning all of that over. The question is when she's working with the attorneys to provide the information and we are asking questions and she is giving answers. Factually they have everything. We're not withholding any of the facts that were relied upon, any of the documents or anything like that. But if a draft complaint is sent to Mr. DeNiro and he shares it with her to make sure it is factually accurate since she has first-hand knowledge and has been working with the attorneys, that's the question. Or that's at least one of the questions. And, again --

MS. HARWIN: Your Honor, this - I'm sorry, Mr. Drogin, you may continue.

MR. DROGIN: No, no, go ahead.

MS. HARWIN: Your Honor, I would just simply, and this is Alexandra Harwin on behalf of plaintiff. I would simply note that it is not the case that the documents that have been withheld or redacted are limited to those such as a draft complaint. For instance, among the dribs and drabs of documents received over the past week are lots of communications compiling purported facts where attachments have not been produced or the content has been substantially redacted. This is information from the purported investigation. These are the bones of the

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2 purported investigation where the documents are not  
3 produced to us in full, and, again, you know, to be in a  
4 situation where plaintiff has to depose the people who are  
5 participating in these communications where we don't  
6 actually have the substance of the communications that  
7 were exchanged is deeply problematic.

8           And as the Court has noted, this goes to the  
9 heart of defendants' defense that the purported  
10 investigation they conducted was not retaliatory in  
11 nature. But, again, much of that investigation has been  
12 concealed, and as of now, because we are getting documents  
13 in dribs and drabs, we have no assurance that there aren't  
14 going to be additional documents that are, you know,  
15 coming about in the coming days. And so we very much  
16 appreciate the Court's inclination to extend the time for  
17 completing fact depositions because it truly would be  
18 highly prejudicial and extremely inefficient for all  
19 parties to proceed on what is clearly a very disputed and  
20 incomplete documentary record.

21           And, Your Honor, with respect to the procedures  
22 for presenting documents for in camera review, I would  
23 note that while Mr. Bennett has noted that there may be  
24 approximately 200 documents or so that are being  
25 completely withheld. It appears based on our review that

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there are many, many dozens, if not, you know, over a hundred additional documents that have been substantially redacted based on purported privilege issues.

And so, you know, our understanding of the universe is substantially larger than 200 documents, and I would note that, at the time the Court set the original procedure, there were, you know, many hundreds of additional documents being withheld. So if the Court were inclined to hv a sample of, say, 15 documents per category, you know, we certainly wouldn't object to that. But we would be concerned about having only a sample of, say, you know, five or ten documents per category as not being sufficient to give the Court the sense of what the nature is of the documents being withheld or redacted because, again, Your Honor, it's not limited to documents such as draft complaints as has been suggested by defense counsel.

MR. BENNETT: Your Honor, this is Gregory Bennett. If I could just add something to that.

THE COURT: Go ahead.

MR. BENNETT: Your Honor, thank you. I don't want, I don't have the precise numbers in front of me, so as plaintiff's counsel just mentioned, the 200 number might not be correct. It might be a lower count.

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Obviously we will do, we will provide the Court with however many samples it would like following the creation of the doc by doc privilege log.

With respect to certain aspects of redactions that have been contained on documents that the recently produced, we plan on notifying counsel today that we do plan on seeking protective relief regarding one of the categories of documents, and I think that would at least address in particular plaintiff's concern about some of those redactions. What those relate to are, following the plaintiff's testimony, defendants decided to produce documents between Ms. Robinson and an attorney who represents Canal and Mr. DeNiro in connection with various transactions on both films advertising and related business ventures. In the course of producing those documents, because there is absolutely zero relevance and they are highly sensitive and confidential information contained in the transactional documents, it did apply redactions to dollars figures and the substance of the terms of transactional agreements.

So that is something that remains open at present. We planned on notifying or inquiring from plaintiff's counsel today by letter as to whether or not they would consent to the forthcoming motion.



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2 THE COURT: But why do plaintiffs need that  
3 data anyway?

4 MR. DROGIN: Your Honor --

5 THE COURT: Why should there be motion practice  
6 on that kind of redaction? That's neither here nor there  
7 in this case.

8 MS. HARWIN: Your Honor, this was raised with  
9 us previously, but, you know, we're happy to confer with  
10 defendants because we certainly would like to avoid the  
11 need for additional motion practice that the Court would  
12 need to adjudicate. And so we're happy to work with them  
13 to try to resolve this issue --

14 THE COURT: Yeah, I'd ask you to meet and  
15 confer because this is --

16 MS. HARWIN: Sure.

17 THE COURT: -- getting out of hand in terms of  
18 the issues that you're raising at the very end of  
19 discovery. So I'm going to reluctantly, reluctantly  
20 extend discovery solely for purposes of deposing the five  
21 individuals that were named today. They must be completed  
22 within 30 days of the Court's ruling on the motion for  
23 privilege, and I am not extending the deadline on the  
24 motion regarding privilege.

25 MS. HARWIN: Your Honor, can I clarify

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something? When you say 30 days, do you mean 30 days after - if the Court orders any supplemental production, can we clarify that it'll be 30 days after --

THE COURT: No --

MS. HARWIN: -- the --

THE COURT: -- 30 days after the ruling, and because I'm going to require immediate production.

MS. HARWIN: Your Honor, I would simply note that, you know, 30 days are approximately 20 business days for the completion of fixed depositions when there may be additional documents to review is quite burdensome, and we would just request --

THE COURT: Well, maybe there's some of these people that you can depose between now and February 11, and there really won't be too much remaining open for them.

MR. DROGIN: That was my thinking, Judge. It's Laurent Drogin. And we'd like you to order February 9 for Ms. Robinson. We actually have a schedule for --

THE COURT: Well, she should go on February 9 if everybody's available. It --

(interposing)

MS. HARWIN: Yeah, we've already --

THE COURT: -- done. I'm not extending the

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time period. But, for example, I haven't heard really why Mr. Kaplan or Mr. Cash couldn't be deposed sooner. I mean I don't know how much is withheld, but you can think about that, but I'm not going to give you more than 30 days --

MS. HARWIN: Your Honor --

THE COURT: That is what it is. This is --

MR. DROGIN: Mr. Cash isn't --

(interposing)

MS. HARWIN: So, Your Honor, Mr. Kaplan and Mr. Cash are both the subject of extensive withheld documents. Mr. Kaplan, there are extensive documents that continue to be redacted, continue to be withheld. And so these are all of these witnesses, unfortunately, are not ones that can be resolved before the motion to compel, but certainly we'll comply with --

THE COURT: Well, then you're going to have to figure out how to get them in in 30 days, and that's --

MS. HARWIN: Okay, thank you, Your Honor.

THE COURT: And so I urge you to reconsider whether you really could conduct some of this stuff now, especially --

MR. DROGIN: We're available.

MS. HARWIN: Your Honor, if I could point out one other just scheduling issue. Under the Court's

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original order there was approximately, there was a lack of time between when plaintiff's deposition was required to be completed and then the completion of affirmative expert reports because experts typically want to review a plaintiff's deposition prior to completing a report. And so given that plaintiff - right now the fact - I'm sorry, right now the deadline for disclosure of affirmative expert reports is February 4, but plaintiff's deposition is not going to be completed until February 9. Therefore, we would request an extension of approximately a month so that experts can review plaintiff's deposition prior to the completion of their reports.

THE COURT: What is the topic, what are the expert topics?

MS. HARWIN: So the experts, there's a vocational expert, an economics expert on damages as well as a psychiatric expert on emotional distress issues.

(pause in proceeding)

THE COURT: I'll extend the time to do the affirmative expert report to February 18.

MS. HARWIN: Thank you, Your Honor.

THE COURT: Anything further from defendants?

MS. HARWIN: Your Honor, there's one more thing from plaintiff, when there's an opportunity.

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THE COURT: Okay, what's the remaining issue from plaintiff?

MS. HARWIN: The remaining issue is that defendants have not yet produced a computation of damages as required under Rule 26. As part of the initial disclosures, as the Court knows, there's an obligation to provide a computation of damages. Obviously, when the case began, defendants weren't asserting affirmative claims, but after they were granted leave to assert affirmative claims, they didn't amend their initial disclosures to provide the computation of damages. And so one thing we would request is the Court set a deadline for defendants to do that because that is obviously something that we need in advance of depositions, the remaining depositions.

THE COURT: Well, the computation simply is the amount that they believe were stolen by the plaintiff, is that right?

MS. HARWIN: They should - they are required to disclose what that computation is as part of Rule --

THE COURT: Have you confirmed the value of what was returned the last day, in the boxes? Because I know that the defendants were asking for confirmation of the contents of those --

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2 MS. HARWIN: Yeah.

3 THE COURT: You have done that?

4 MS. HARWIN: Yes, we - yes.

5 THE COURT: Okay.

6 MS. HARWIN: But as for the issues in the  
7 litigation, obviously there are different claims  
8 concerning various expenses as part of defendants'  
9 counterclaims in this action, and Rule 26(a)(i)(A)(3)  
10 requires them to compute those damages and provide us with  
11 a computation at the inception of the action. And we  
12 still don't have that yet. And so we're simply seeking  
13 that the Court set a deadline for those disclosures.

14 THE COURT: Have defendants computed the extent  
15 of the alleged theft?

16 MR. DROGIN: Your Honor, it's Laurent Drogen.  
17 We have not updated it, and I would also add that there's  
18 another component here under the duty of loyalty for  
19 disgorgement of compensation paid during the period of  
20 disloyalty. I have no problem on behalf of Canal of  
21 supplementing that. If we could have a week to do that,  
22 I'm sure we could turn it around. That's not a problem.

23 THE COURT: Okay, so I'd ask that you - I'll  
24 direct you to supplement that (inaudible). All right,  
25 anything further from defendants?

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MR. DROGIN: I don't think so. Greg, anything  
you have?

MR. BENNETT: No, Your Honor.

THE COURT: Okay, thank you all, we're  
adjourned.

MR. DROGIN: Thanks, Judge.

MS. HARWIN: Thank you, Your Honor.

(Whereupon, the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of Robinson v. De Niro et al, Docket #19-cv-09156-LJL-KHP, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature \_\_\_\_\_

*Carole Ludwig*

Carole Ludwig

Date: February 4, 2022